

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JORDAN S., A Minor, by and through his
Parents and Next Fries, Suzanne and Jeffrey S.,

Plaintiff,

ORDER

- against -

CV 08-1446 (LDW) (AKT)

HEWLETT WOODMERE UNION FREE
SCHOOL DISTRICT,

Defendant.

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A. KATHLEEN TOMLINSON, Magistrate Judge:

The parties contacted my Chambers today by telephone to address a dispute which arose regarding depositions. Defendant's counsel asserted that he was entitled to complete the deposition of a non-party witness which had begun on Tuesday before presenting the remainder of his witnesses. The parties reported that Defendant had taken the non-party witness's deposition for a little more than six hours.

After hearing from both sides, I explained that, pursuant to Federal Rule of Civil Procedure 37(d)(1), Defendant is entitled to take the non-party witness's deposition for a total of seven hours. Under the Federal Rules, neither party is entitled to priority in the scheduling of depositions. Here however, because Defendant's counsel served deposition notices but Plaintiff's counsel did not, the deposition schedule agreed upon initially by the parties is to be given effect. Accordingly, I directed Plaintiff's counsel to contact the non-party witness immediately to see if he is available to appear for the remainder of his deposition tomorrow morning. This will allow Defendant to complete the non-party witness's deposition, after which Plaintiff can take the deposition of Defendant's witness, Ms. McGuire. The parties agreed that if

the non-party witness is not available in the morning, Plaintiff's counsel will begin the deposition of Ms. McGuire and interrupt that deposition, if necessary, to complete the non-party witness's deposition when he is available.

SO ORDERED.

Dated: Central Islip, New York
October 22, 2009

/s/ A. Kathleen Tomlinson
A. KATHLEEN TOMLINSON
U.S. Magistrate Judge